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of liability for a cause of action arising in Pennsylvania. Perhaps a more obviously incorrect case is one holding that when goods were shipped from New York to Boston, where they were burned under circumstances entailing no liability under Massachusetts law, the carrier was responsible purely because the contract of shipment was made in New York. *Faulkner v. Hart*, 82 N. Y. 413. The question in issue was simply one of delivery, and it seems difficult to maintain that what constitutes delivery in Boston may be determined by the law of New York. For a somewhat similar case *contra*, see *Curtis v. Del. L. & W. R. R. Co.*, 74 N. Y. 116. In all cases the preliminary question of the validity of the contract is to be determined by *lex loci contractus*. *Hale v. New Jersey, etc., Co.*, 15 Conn. 539. But granting its validity, the law of the place of performance, or of the event which gives rise to the action, must be applied.

DUTY OWED TO THE PUBLIC BY THE GUARDIAN OF A SMALLPOX PATIENT. — As the law of torts develops, there is apparently a growing tendency to extend the limits of actionable negligence. As a necessary preliminary step to this extension, the courts are bound to find a broadening range of non-contractual legal duties. With the greater complexity of society and the increasing intercourse between its different and oftentimes widely separated parts, the existence of these duties is frequently assumed if not always logically accounted for. An illustration of this is found in a recent case in Texas which raises, on an interesting set of facts, the question as to the origin of a duty for the negligent breach of which the defendant must respond in damages. A railroad company had a contract with its employees whereby it agreed for a small monthly remuneration to care for them in case of illness. In performance of its contract the company negligently provided an incompetent attendant for a delirious smallpox patient. It was known to the defendant that persons thus afflicted would be likely to escape if care were not exercised. Owing to the attendant's negligently falling asleep, the patient escaped and infected the plaintiff. The defendant was held liable. *Missouri, etc., Ry. Co. v. Wood*, 68 S. W. Rep. 802.

Although the court, in arriving at this desirable conclusion, recognizes that the discovery of a legal duty is the pivotal point in the case, yet it does not make an analysis of the principles involved, or consciously attempt to lay down a new rule of law or to extend a recognized one. In most of the cases cited in the opinion the defendant had done some affirmative act such as bringing diseased animals in contact with those of the plaintiff, or taking an infected patient through the streets or to the plaintiff's house. Whereas in the principal case the defendant's negligence consisted not in doing a positive act, but in failing to keep the patient away from the plaintiff: an act of omission. *Dicta* favorable to this decision appear in *Henderson v. Dade Coal Co.*, 100 Ga. 568; and *Dean v. St. P., etc., Co.*, 41 Minn. 360. For contrary *dicta*, see *Sarson v. Roberts*, [1895] 2 Q. B. 395. Only one case has been found which appears to be precisely in point. There the defendant having control of a diseased animal was held liable for negligently failing to repair a partition separating his own from the plaintiff's animals, as a consequence of which the disease was communicated. *Mills v. N. Y., etc., Co.*, 2 Robt. 326; affirmed, 41 N. Y. 619. A further class of cases which in many respects may be thought analogous to the principal case is that in which the defendant negligently puts on the market a wrongly labelled

drug, and a remote vendee is allowed to recover for resulting damage. See *Thomas v. Winchester*, 6 N. Y. 397; 15 HARV. L. REV. 666. But there too the negligent act is positive.

The law is less ready to impose a duty to act than a duty not to act. A man is under no legal duty to save a stranger whom he sees drowning; but he is under a legal duty not to push him into the water. The defendant undoubtedly would owe a duty to all the individual members of the public not to take the patient through the streets or to their houses. If it is held that there exists the same broad duty actively to prevent his spreading the infection, the result is apparently an extension of the rules of tort liability to a new class of cases. It means that as the law grows it will recognize as a legal duty what formerly it has regarded as a moral duty only. If the case is to be supported on principles heretofore recognized, it must be on the ground that the defendant did certain acts prior to the time of the alleged negligence which imposed upon him the duty of care. When he voluntarily assumed control of this patient — this irresponsible force — he could foresee damage to some remote third person, or class of persons, as a natural and probable consequence of a failure by himself to use ordinary care in controlling it. Thereupon it may be said that a duty arose toward such persons to exercise this care. Cf. POLLOCK, TORTS, 2nd ed. 373-4.

DETERMINATION OF STATUS OF FOREIGN TERRITORY. — Probably no court in this country would hold that the decision of the executive department of the government on a political question was not binding on the courts; yet what is a political question has never been strictly defined. A recent case before the United States Circuit Court raised a very nice question of this kind. An importer who had brought crude tartar from Algeria into this country claimed the right to pay duty on it at 5 per cent *ad valorem* under the terms of the reciprocity treaty between the United States and the Republic of France. The court found for the importer, holding that the question whether Algeria was a part of France was a judicial not a political one; and that in the determination of it the court would receive testimony of the French ambassador and other French officials concerning the law on the point. *Tartar Chemical Co. v. United States*, 116 Fed. Rep. 726 (Circ. Ct., S. D., N. Y.).

If there were a dispute between the United States and France concerning the possession of Algeria, clearly it would be a political question to be decided by the executive branch of the government, and the court would be bound to respect its decision. *Foster v. Neilson*, 2 Pet. (U. S. Sup. Ct.) 253. This the court would do even though on general principles of international law, apart from special decision by the political department, it would itself reach a different result. *In re Cooper*, 143 U. S. 472. Again, if there were disputes between France and another state concerning the ownership of Algeria, the court would be bound by the decision of the executive. *The Santissima Trinidad*, 7 Wheat. (U. S. Sup. Ct.) 337. If it were a question of the existence of Algeria as an independent power, the court would follow the ruling of the political department. *Mighell v. Sultan of Johore*, [1894] 1 Q. B. 149. Furthermore, if it were a question which of two governments was the lawful government of Algeria, it would clearly be a political question, and the court would take notice of the ruling of the executive. *Luther v. Borden*, 7 How. (U. S. Sup. Ct.) 1. The reason for the rule that the